

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 35219

**UNION PACIFIC RAILROAD COMPANY –
PETITION FOR DECLARATORY ORDER**

224870

**COMMENTS OF BUCKEYE TECHNOLOGIES INC.
AND VERSO PAPER CORP.**

In accordance with the decision of the Surface Transportation Board issued March 10, 2009, Buckeye Technologies Inc. (“Buckeye”) and Verso Paper Corp. (“Verso”) are submitting their comments addressing the issues raised in the petition filed by the Union Pacific Railroad Company (“UP”). In that petition, UP has requested that the Board permit railroads to refuse to provide service, notwithstanding their common carrier obligation, in situations where “the requested transportation has not been used recently; would displace much closer sourcing options; and increase safety and security risks to employees and the public.” As set forth in more detail below, Buckeye and Verso believe the relief sought by UP is legally and factually inappropriate, unnecessary, and would establish a problematic and dangerous precedent jeopardizing the continued validity of our nation’s system of common carriage.

I. IDENTITY OF COMMENTERS

Buckeye, together with its predecessors, has been producing cellulose-based specialty products for more than eighty years from pulp facilities that are located in Memphis, Tennessee and Perry, Florida. The attached verified statement of H. Gray Carter attests to the fact that these facilities “are heavily dependent upon the use of

chlorine,” that this chlorine is sourced from various locations using inbound rail transportation, and there are no other modal alternatives available to substitute for the use of rail. And, while Buckeye tends to source this chlorine from the relatively shorter haul origins in the Western Gulf of Mexico, it needs to be able to shift to other chlorine sources as far away as the Great Lakes area on occasion. (Carter Statement at 1-3.) Consequently, even if a particular routing from a lengthy distance may not have been “used recently,” it is essential that alternative sources from larger haul markets be readily available should the need arise in order to avoid plant shutdowns with the concomitant economic consequences on the company, its employees and the local community.

Verso is a leading manufacturer of coated papers and operates four paper mills in Maine, Michigan and Minnesota. Although these mills do not use chlorine, they are nonetheless dependent on the continued viability of chlorine facilities, since the caustic which is an essential raw material to the production of coated papers is essentially a byproduct in the production of chlorine. In addition, these mills also use substantial quantities of sulfuric acid, another hazardous chemical. While Verso does source substantial quantities of its caustic and sulfuric acid from relatively local origins using truck and/or barge movements, it is also heavily dependent on sourcing these commodities from longer distance origins that can only move economically by rail. (See Verified Statement of Glen Sanders at 1-3.)

As such, both Buckeye and Verso are heavily dependent on requiring railroads to honor their common carrier service obligations in order to ensure that they have reliable and competitive alternative sources of supply.

II. UP'S REQUEST CONFLICTS WITH RECENT REGULATORY INITIATIVES

Buckeye and Verso agree that reasonable precautions need to be taken to ensure that the risk involved with transporting chlorine and other hazardous materials is reduced to the lowest practicable level. Similarly, both of these companies are sensitive to the important role railroads have in selecting their routings carefully so as to minimize any unnecessary transportation of such materials through high population areas. On the other hand, it is also clear that railroads cannot – and should not – cease handling traffic tendered by shippers simply because the commodities are considered hazardous, or because the shipper has not shipped to or from any particular location with as much frequency as the railroad would like, or because the railroad believes that the shipper should alter its choices of suppliers or customers.

The federal government has taken a number of steps in recent years to address the specific risks cited by UP, yet has never suggested anything approaching the notion that railroads should have the unilateral right to decide whether, when or where they will handle hazmat shipments. For example, on November 26, 2008, the Department of Transportation's Pipeline and Hazardous Materials Safety Administration ("PHMSA") issued a final rule requiring railroads to analyze the safety and security risks along the rail routes where hazardous materials, such as chlorine, are being transported. (PHMSA Docket No. 2004-18730; 73 Fed. Reg. 72182 *et seq.*) As particularly relevant here, these new regulations required railroads to assess alternative routing options with a view toward making routing decisions that would minimize transportation risks. *See* 49 C.F.R. §172.820 (1980). In addition, PHMSA's final rule makes it clear that the Federal Railroad Administration ("FRA") reserves the right to require railroads to use an

alternative route in the event the carrier's choice of routing is determined not to be the safest or most secure practicable route available. 73 Fed. Reg. at 72189. Despite PHMSA's in-depth review of this important issue, at no time has that agency proposed that railroads establish de facto embargoes against the movement of certain commodities. To the contrary, this expert agency, after giving the subject a substantial amount of review, and entertaining comments from all affected members of the industry (including the railroads) established procedures it deemed appropriate to both keep traffic moving and reduce unnecessary risks.

In conjunction with this PHMSA initiative, the FRA issued its own final rule on November 26, 2008 establishing procedures by which railroads could challenge any rail routing decisions made by the FRA. (FRA Docket 2007-28573; 73 Fed. Reg. 72194 et seq.) 49 C.F.R. 209.501 (2008). This regulation establishes a process by which a railroad seeking relief from a routing mandated by the FRA may be entitled to have the views of PHMSA, Transportation Security Administration ("TSA") and the Surface Transportation Board considered. There is accordingly a process already in place by which a railroad concerned about the risk associated with a mandated routing can seek governmental intervention concerning a shipper's request for service if the attendant risks seem excessive. That process properly avoids ceding unilateral authority to railroads.

As part of that same comprehensive interagency process, the TSA issued a final rule, also on November 26, 2008, establishing additional security requirements for railroads. (See TSA Docket No. 2006-26514; 73 Fed. Reg. 72130 et seq.) These rules established procedures for monitoring and protecting rail cars that handle these commodities in order to decrease their vulnerability to possible attacks by third parties.

The fact that TSA, PHMSA and FRA issued related final rules on the same day that were intended to enhance the safe handling of hazardous materials by rail is indicative of the focused attention the government has given to this issue and of the significant steps that have already been taken to minimize the risks associated with handling these shipments.

In summary, none of these agencies suggested, let alone required, that railroads cease transporting hazardous materials through metropolitan areas. While no one disputes the wisdom of minimizing transportation risks, FRA, PHMSA and TSA have all nonetheless recognized that rail transportation of hazardous materials is often the safest, most economical and practicable way of moving these items around the country and have established measures they deem appropriate to accommodate the need to avoid fragmenting the national rail system. It is surprising that UP now seeks to substitute its judgment by seeking extraordinary, unilateral authority to decide what cargo it will handle.

III. UP'S ATTEMPT TO ABROGATE ITS COMMON CARRIER OBLIGATION IS UNWARRANTED AND AN IMPROPER COLLATERAL ATTACK ON DECISIONAL CASE LAW

Buckeye and Verso believe it is now well beyond challenge that railroads subject to the Interstate Commerce Commission Termination Act ("ICCTA") have an obligation to provide service on reasonable request. 49 U.S.C. §11101(a). And, Section 11101(b) goes on to specifically require railroads to provide rates and service terms, all of which must be reasonable, upon request of any person. There is no exception to this statutory obligation.

That there is no statutory exception to the affirmative obligation to provide service on reasonable request is not surprising given the many years of regulatory and judicial precedent requiring that railroads scrupulously observe their common carrier

obligation, even if the cargo is of a dangerous character. (See, e.g. *Actiesselskabet Ingrid v. Central R. Co. of New Jersey*, 216 Fed. 72 (2nd Cr. 1914) (affirming the requirement that the rail carrier transport dynamite notwithstanding its objection to the risk).

Many years later, the Interstate Commerce Commission ("ICC") made it clear in a series of cases that railroads could not properly refuse to transport spent nuclear fuel and other extremely hazardous materials. For example, in *Radioactive Materials v Missouri-Kansas-Texas R. Co.*, 357 I.C.C. 458 (1977) ("MKT"), the railroad proposed to flag out from its published tariffs on radioactive materials and thus attempt to avoid its obligations under Section 11101(a) to carry spent nuclear fuel. Recognizing the statutory authority of the Department of Transportation ("DOT") and the Nuclear Regulatory Commission ("NRC") over the safe transportation, handling and packaging of radioactive materials, the ICC concluded that a carrier could not properly refuse to transport such materials on the grounds that they were too hazardous as long as the shipments otherwise complied with DOT and NRC safety requirements. A few years later, the ICC was even more clear on the subject.

A railroad may not renege on its common carrier commitment to transport radioactive materials if, in fact, the minimum safety requirements of the DOT and NRC are satisfied.

U.S. Department, et al v Baltimore & O R Co, 364 I.C.C. 951, 959 (1981).

The railroads' obligation to handle spent nuclear fuel was affirmed by the Sixth Circuit in *Akron, C. & Y.R. Co v ICC*, 611 F.2d 1162 (1979). The court concluded, first, that the common carrier obligation of railroads was even broader than that which existed under common law. Instead, that common carrier obligation was now embodied in the Interstate Commerce Act, that this obligation was "...not an unjust one, in view of the

governmental largess which railroads have received, and in view of the unique importance to commerce of rail transportation.” 611 F.2d at 1166. The court then went on to affirm the ICC’s decision in the *MKT* case, specifically affirming the agency’s conclusion that the railroad’s position was an impermissible “collateral” attack on the regulations of DOT and NRC. *Id.* at 1169.

More recently, the ICC had a similar occasion to deal with attempts by railroads to avoid transporting hazardous chemicals. In *Classification Ratings on Chemicals, Conrail*, 3 I.C.C. 2d 331 (1986), Conrail sought to flag out of its participation in tariffs pertaining to the handling of certain hazardous chemicals. Conrail argued that the materials it was asked to transport were so lethal that the carrier was entitled to have control over when the commodities were to be tendered, how they were handled, the type of cars to be used, and the allocation of risk. The ICC denied Conrail’s request in part because it failed to present specific evidence as to why DOT regulations were inadequate. 3 I.C.C. 2d at 337.

That is precisely the situation here. Both DOT, through PHMSA and the FRA, and TSA have carefully reviewed the handling of hazardous materials by railroad and have promulgated regulations that address the very safety concerns that are now raised – without any evidentiary support – by UP. There is no justification for UP, or any other railroad, to now attempt to flag out of its statutory common carrier obligations as long as the shipments being tendered and the routings that are contemplated comply with the applicable safety regulations.

IV. A RAILROAD SHOULD NOT BE ABLE TO UNILATERALLY DECIDE ITS COMMON CARRIER OBLIGATION

One overriding principle has remained constant throughout the history of litigation and regulation in the area of hazardous materials transportation – namely, that railroads cannot unilaterally determine, at their whim, what commodities they will agree to handle. The statutes, case law, and implementing regulations have consistently recognized that shippers and receivers of hazardous materials must have access to the national rail system. And while railroads are certainly free to impose conditions of carriage that are reasonable under the circumstances, they cannot unilaterally embargo certain commodities simply because they are hazardous and entail risks.

As is the case with many other shippers and receivers of hazardous materials, Buckeye and Verso are heavily dependent upon reliable access to the rail transportation of chlorine. In Buckeye's case, chlorine is an essential component in the process of producing its cellulose-based specialty products, and its facilities would be shut down if that supply were interrupted. (Carter Statement at 1-2.) And, while Verso does not directly use chlorine, the caustic that is essential to the continued operation of its mills is dependent upon the continued production of chlorine. (Sanders Statement at 1-2.) Similarly, Verso is heavily dependent upon continued rail transportation of sulfuric acid, which – like chlorine – is an extremely hazardous commodity. (*Id.* at 2.)

Buckeye and Verso are aware of no case in which the ICC, STB or any other agency has permitted a carrier to decline requests for service where there are no transportation alternatives. Although the ICC did sustain a decision by UPS not to handle fireworks, its decision was based upon the fact that the complaining shipper had a variety of transportation alternatives. *B.J. Alan Co., et al. v United Parcel Service, et al.*, 5

I.C.C. 2d 700, 716 (1989).¹ Buckeye and Verso have no reasonable transportation alternatives for the chlorine, caustic and sulfuric acid they require. Buckeye, as is the case with many other receivers of such commodities, is not set up to receive chlorine by truck (Carter Statement at 2), since there is no supporting infrastructure for this alternative chlorine to Buckeye other than by rail. Further, for both Buckeye and Verso, when chemicals must be shipped over long distances there is often no practical, economical transportation alternatives to rail. Moreover, chemical tank cars have improved safety features that are designed to preclude accidental releases of such commodities (*Id.* at 3.) So, chlorine and other hazardous materials are far better suited to rail carriage than other modes of transport.

Notwithstanding its petition, it does not appear that UP actually wants to embargo all rail transportation of chlorine. Instead, it appears that UP only wants to embargo *some* movements of this commodity based upon its own perception of what sources of supply are appropriate to a specific customer. In UP's view, it need not provide rates – notwithstanding its obligation under Section 11101(b) – because that customer has “ample supplies of chlorine located in close proximity to certain named destinations.” (UP Petition at 2.) With all due respect, the decision where a shipper sources its essential raw materials is not properly a matter of concern to UP or any carrier. There are obviously a myriad of factors that Buckeye, Verso and other manufacturers must consider in deciding where to source their raw materials. While distance is clearly a factor to be

¹ In addition, the ICC recognized that UPS was subject to prosecution by various governmental entities for violation of the state and local laws that prohibited the transportation, sale or use of fireworks. (5 ICC 2d at 713-15) As noted above, federal law specifically contemplates that rail carriers will continue to handle hazardous commodities such as chlorine and thus preempt any state or local law or ordinance to the contrary.

considered, it is not the only consideration that a purchasing department must take into account. Neither UP nor any other carrier will be privy to those considerations, nor should they be, as this is not their business.

Nor should a railroad properly refuse to move traffic from one origin to a particular destination simply because that routing had not been used recently. The choice of sourcing options is a dynamic process that are made by shippers in extraordinarily competitive markets. Ceding the authority sought by UP – namely, to refuse to handle traffic in the future unless it has moved in the recent past – would seriously damage that competitive environment.

Neither Buckeye nor Verso are aware of the specific traffic that appears to be of concern to UP, as the public version of its Petition was redacted to conceal the identity of those points. Nevertheless, its Petition implies that the customer in question has ample sources of chlorine in much closer proximity to the various destinations, so that the requested longer hauls that necessarily move through metropolitan areas are unnecessary. Yet, since UP is apparently not unwilling to transport chlorine and other hazardous materials through those same metropolitan areas on other occasions, it would seem that UP's real concern is perhaps not directed to safety considerations of these moves. Regardless, just as a railroad cannot refuse to accept shipments of spent nuclear fuel and other hazardous materials, there is no justification for UP to now unilaterally decide what shipments of chlorine it will accept.

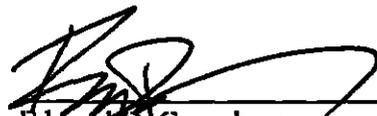
Curiously, UP intervened – as a member of the Association of American Railroads – in the litigation initiated by CSX Transportation Inc. which successfully challenged the attempts of the District of Columbia City Council to bar the transportation

of hazardous materials, such as chlorine, within a 2 mile radius of the U.S. Capitol building. Both the Board and the courts agreed that the Department of Transportation's rules regarding en route security of hazardous materials constituted a uniform, national scheme of regulation of such transportation and that efforts by the D.C. City Council attempting to preclude these activities even within close proximity of the U.S. Capitol were preempted and inappropriate. STB Finance Docket No. 34662, *CSX Transportation, Inc – Petition for Declaratory Order* (Decision served March 14, 2005); *CSX Transp., Inc v. Williams*, 406 F.3d 667 (D.C. Cir. 2005). Having successfully participated in preserving the right to transport chlorine and other chemicals by rail through the middle of the District of Columbia, it is odd for UP to now seek selective discretion to ignore its common carrier obligations in other metropolitan areas.

V. CONCLUSION

For the reasons stated above, Buckeye Technologies Inc. and Verso Paper Corp. request that the STB deny the Petition filed by UP. As discussed above, UP's Petition seeks relief that is contrary to its common carrier obligations, is inconsistent with the comprehensive regulatory scheme governing the safe handling and transportation of hazardous commodities and seriously jeopardizes the continued viability of companies that are dependent upon a reliable rail transportation system

Respectfully submitted,



Edward D. Greenberg
GKG Law, P.C.
1054 Thirty-First Street, NW
Washington, D.C. 20007
Ph.: 202-342-5277
Fax: 202-342-5219

April 10, 2009

*Counsel for Buckeye Technologies
Inc and Verso Paper Corp*

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 35219

**UNION PACIFIC RAILROAD COMPANY –
PETITION FOR DECLARATORY ORDER**

VERIFIED STATEMENT OF F. GRAY CARTER

1. My name is F. Gray Carter and I am the Vice President of Purchasing and Logistics of Buckeye Technologies Inc. (“Buckeye”). My office address is located at 1001 Tillman, Memphis, Tennessee 38108. I have reviewed the petition filed by the Union Pacific Railroad Company that led to the initiation of this proceeding, am familiar with the issues it raises and am providing these comments in reply to the Notice issued by the Surface Transportation Board which sought public comment.

2. Buckeye and its predecessors have been leaders in producing value-added cellulose-based specialty products for high-end niche markets worldwide for more than eighty years. As relevant to the issues here, Buckeye produces various types of chemical cellulose, customized fibers, and fluff pulp that are used by a large number of manufacturers to make a myriad number of final products. The company’s products are made at its pulp facilities which are located in Memphis, Tennessee and Perry, Florida. Both of these facilities are heavily dependent upon the use of chlorine, which is utilized both to produce various forms of bleaching chemicals (such as sodium hypochloride and chlorine dioxide) and as a water treatment agent.

3. Due to the specialized nature of the products manufactured there and the machinery and processes used, there is no available substitute for the use of chlorine. Simply stated, if either of the Foley or Memphis facilities is unable to obtain a reliable, continuous movement of inbound chlorine, they would be forced to close, jeopardizing the employment of almost a thousand people and cause an enormous financial loss to the company and seriously impacting the communities where they are located.

4. It is important for the Board to understand that the rail transportation of chlorine is absolutely essential to the continued operation of Buckeye's facilities. In view of the quantities of chlorine that are use daily, even assuming one could assemble a sufficiently large fleet of tank trucks to accommodate Buckeye's needs (which is not the case), our facilities do not have the capability of accepting truck deliveries of this commodity. Barge transportation of chlorine is also an unacceptable modal alternative because the volumes of product barges would transport are far too large to be accepted at Buckeye's facilities. There are no storage facilities for chlorine at these plants. Instead, rail cars are unloaded directly into the various treatment tanks as soon as they arrive; and, once the rail car is unloaded, it is switched out and the next loaded car is then switched directly in to the unloading spot. Consequently, although Buckeye requires a reliable and consistent inbound movement of rail cars, both the configuration of our plants and the economics of our business preclude the company from utilizing storage facilities.

5. It is a characteristic of the chlorine and many other bulk chemical businesses that the suppliers sell their product on a delivered-price basis. The chemical companies have made substantial investments in chemical tank cars, actually own the inbound product being transported until it is unloaded at destination and accordingly must

have the chlorine delivered via rail if for no other reason than to amortize their substantial investments. But, cost recovery of equipment is not the only reason that this commodity is shipped by rail.

6. While it is clear that chlorine is a hazardous material, the fact remains that rail transport is the safest mode of transportation for chlorine. The manufacturers of rail tank cars have made a large number of improvements in rail car design, including the development of special linings to prevent corrosion and new types of valves to prevent accidental releases. In addition, the major chemical manufacturers announced an initiative in late 2006 of their intention to aggressively replace their rail tank car fleets with a new generation of safe and secure equipment (a copy of the press release issued by these companies is appended at Attachment A).

7. A number of government agencies are similarly mindful of the hazardous nature of chlorine and other chemicals, and have continually issued regulations that are intended to minimize the risks attendant to the transportation and storage of hazardous materials. These agencies include the Environmental Protection Agency, the Department of Transportation and the Transportation Security Administration. Those regulations have gone a long way toward reducing the risk associated with the rail transportation of these commodities. Therefore, while we appreciate the Union Pacific's expressed concern for public safety as a "responsible public citizen," the responsible governmental agencies have been taking appropriate steps to minimize risks in this area.

8. As the chemical companies own the chlorine being transported and accordingly bear all risks until the product is delivered at destination, they have strong

incentives to ensure that both the design and maintenance of their rail tank car fleets and the transportation routing is as safe as possible. It is clearly not in the best interests of the chlorine shippers to utilize unsafe equipment or require rail routings that unnecessarily add to their risk of doing business.

9. From a pricing and cost standpoint, chlorine is regarded as a commodity that is generally priced against various publicly available indices, subject to any individually negotiated discounts, plus the applicable freight costs. As the transportation cost is such a significant component of the final delivered price, it is imperative that Buckeye source its chlorine from the closest locations that are able to provide us with a reliable source of supply on a competitive basis. For those reasons, Buckeye generally receives chlorine for its Perry, Florida and Memphis facilities from chlorine shippers in the Western Gulf area.

10. Both of Buckeye's facilities generally operate around the clock, twenty-four hours a day, seven days a week without, as noted above, any storage capability for chlorine. If there is any interruption in the sourcing of chlorine from producers in the Gulf of Mexico area, it is essential that Buckeye immediately be able to shift to other chlorine sources, such as chemical facilities in the Great Lakes area. Thus, Buckeye must have the flexibility to source its chlorine from whatever locations it believes to be the most appropriate at any given point in time. So, while we would generally prefer to utilize the relatively short distance chlorine suppliers in the Gulf region, there are occasions when we need the flexibility to access other sources of supply. This happens periodically when there are natural disasters, such as hurricanes, or major chlorine plant shutdowns for maintenance or other reasons.

11. Accordingly, while it is clearly in Buckeye's interest – and that of the chlorine producers as well – to minimize economically undesirable transportation distances and unnecessarily risky routings, it is essential that these sourcing and routing decisions be left to Buckeye and other shippers and receivers, rather than the railroads. Notwithstanding what the Union Pacific and other carriers may feel, we know our business much better than they do and, more importantly, we have a vested interest both in reducing costs and minimizing unnecessary risks.

12. Moreover, the relief requested by the Union Pacific here would establish a very dangerous precedent. If the Union Pacific can determine whether, when and where it will handle chlorine, there is nothing to prevent the Union Pacific or other railroads from making similar unilateral decisions about the handling of other chemicals or hazardous materials in the future. That would fracture the concept of a railroad's common carrier obligation, give railroads unwarranted and unacceptable control of shipper sourcing decisions, and jeopardize the efficient operation of a countless number of shippers and receivers of hazardous materials.

13. Buckeye accordingly requests that the Board deny the Union Pacific's petition in which it apparently wishes to have the unilateral ability to determine the extent of its common carrier obligation.

VERIFICATION

I, F. Gray Carter, Vice President of Purchasing and Logistics of Buckeye Technologies Inc., hereby certify that the foregoing is true and correct to the best of my knowledge, information and belief.

Dated: 4/2, 2009

F. Gray Carter
F. Gray Carter

STATE OF TENNESSEE)
) ss:
COUNTY OF shelby)

SUBSCRIBED AND SWORN TO before me this 2nd day of APR, 2009

Witness my hand and official seal.

Gloria J. Clark

Notary Public

My commission expires: _____

**MY COMMISSION EXPIRES:
November 16, 2009**



**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 35219

**UNION PACIFIC RAILROAD COMPANY –
PETITION FOR DECLARATORY ORDER**

VERIFIED STATEMENT OF GLEN SANDERS

1. My name is Glen Sanders and I am the Director of Sourcing for Verso Paper Corp. (“Verso”). My office address is located at 6775 Lenox Center Court, Suite 400, Memphis, TN 38115. I am familiar with the issues filed by the Union Pacific Railroad Company raises and am providing these comments in reply to the Notice in our effort to assist the Surface Transportation Board understanding the significance of Union Pacific’s position.

2. Verso is a leading manufacturer of coated papers, products which are essential for the production of magazines, catalogs, and various types of commercial print applications. Verso operates four paper mills, which are located in Androscoggin and Bucksport, Maine, Quinnesec, Michigan and Sartell, Minnesota. While these mills do not utilize chlorine, they nevertheless use caustic, which is co-produced with chlorine, and they are heavily dependent upon unfettered access to other chemicals, such as sulfuric acid.

3. Verso does not directly utilize chlorine in order to produce coated papers. On the other hand, an essential ingredient in the Verso mills is a commodity called

caustic soda, which itself is not on the extremely hazardous materials list established by the U.S. Department of Transportation. Because caustic is co-produced with chlorine, limitations in chlorine production would necessarily reduce Verso's ability to source caustic from the affected origins, which could then result in increases to the cost of this essential raw material.

4. These mills also use substantial quantities of sulfuric acid, which is a hazardous chemical that is mixed with sodium chlorate inside the mill to produce chlorine dioxide. Chlorine dioxide is then used to bleach and whiten the pulp that is manufactured in these mills. As is the case with caustic, it is absolutely essential that these mills have a reliable supply of sulfuric acid in order to continue their production.

5. Verso's four mills are located in rural areas and collectively employ approximately 2,700 people. As such, they are significant employers in these areas and any shutdown of the facilities would have significant adverse economic consequences to the people and communities in which they are situated.

6. Due both to their diverse locations and the manner in which the mills were constructed, there is no single mode for transporting these raw materials to all four of these facilities. In some instances, we have the ability to source caustic by barge and truck, while in other instances the inbound product moves by rail from long distance origins. Similarly, in some instances, the inbound sulfuric acid moves in shorter distances and relatively smaller quantities that can be efficiently and safely moved by truck, whereas in other instances the distances and volumes required to access the product necessarily requires the use of inbound rail. It is important to understand, however, that

the availability of rail transportation helps us to maintain a competitive supply of these essential raw materials, both with respect to the products themselves and for their transportation, as the availability to switch to rail necessarily broadens the areas from which our supplies can be obtained. Accordingly, the unrestricted ability to obtain these products by rail is essential.

7. Verso is certainly aware that the transportation of hazardous materials involves some risk, and is accordingly sensitive to the need for the railroads and government agencies to take appropriate steps to minimize those risks, especially with respect to their movement through highly populated areas. Nonetheless, it is simply a fact that the rail system is not built in a way in which hazardous materials can always be routed around metropolitan areas. It is necessary, accordingly, that we do the best with the system we have and take all necessary and reasonable steps to minimize risks. Having said that, foreclosing long distance sources of supply as a way of reducing those risks is not reasonable and would clearly reduce competitive sourcing alternatives and increase the price of Verso's raw materials.

8. While Verso is sympathetic to the expressed concerns about the risk of handling hazardous materials, Verso is very concerned about giving the Union Pacific – or any other railroad – the ability to determine whether, when and from where it will agree to accept rail shipments. Neither Union Pacific nor the other railroads know our business and, in any event, cannot be expected to be particularly sympathetic to our need to have various reliable, competitive sources of supply. These are issues in which we have a vested interest as a way of both reducing our costs and minimizing unnecessary risks. While the railroads undoubtedly know their own businesses, they cannot be

expected – and, more basically, be relied upon – to either understand or be responsible for protecting the interests of their customers.

9. Verso believes that the relief requested by Union Pacific would establish a most unfortunate precedent. In our opinion, just as it is inappropriate for the Union Pacific to determine whether, when and where it will handle chlorine, it is just as inappropriate to single out any other chemical or hazardous material. The ability to do so would be totally inconsistent with the common carrier obligation of railroads, give them an unreasonable control of Verso's sourcing options, and jeopardize the efficient operations of shippers and receivers of hazardous materials.

10. Verso accordingly requests that the Board deny the Union Pacific's petition.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Comments of the Buckeye Technologies Inc. and Verso Paper Corp. was served this 10th day of April, 2009, on the following parties of record:

Abbate, Patricia
Citizens For Rail Safety
400 West Cummings Park, Suite 2375
Woburn, MA 01801

Benz, David E
Troutman Sanders Llp
401 9Th St., Nw, Suite 1000
Washington, DC 20004

Borman, Keith T
American Short Line And Regional
Railroad Association
50 F Street, Nw, Suite 7020
Washington, DC 20001-1564

Conley, Tonya
Union Pacific Railroad Company
1400 Douglas Street, Stop 1580
Omaha, NE 68179

Dimichael, Nicholas J
Thompson Iline Llp
1920 N Street, N.W. Suite 800
Washington, DC 20036

Donovan, Paul M.
Laroe, Winn, Moerman & Donovan
1250 Connecticut Avenue, N.W., Suite 200
Washington, DC 20036

Gibson, Jennifer
National Association Of Chemical
Distributors
1555 Wilson Boulevard, Suite 700
Arlington, VA 22209

Leitner, Gregory
Husch Blackwell Sanders Llp
736 Georgia Avenue, Suite 300
Chattanooga, TN 37402

Navc, Mary E.
Old World Industries, Inc.
4065 Commercial Avenue
Northbrook, IL 60062-1851

Pickett, W. Dan
Brotherhood Of Railroad Signalmen
917 Shenandoah Shores Road
Front Royal, VA 22630

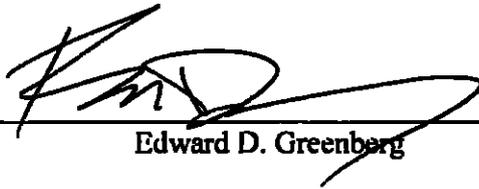
Simpson, Freddie N
Suite 222-C
5590 Nolensville Road
Nashville, TN 37211

Thompson, Mardi Ruth
U.S. Department Of Homeland Security
Transportation Security Administration
Office Of The Chief Counsel
601 South 12Th Street
Arlington, VA 20598

Treichel, Judy
Nevada Nuclear Waste Task Force,
Incorporated
P. O. Box 26177
Las Vegas, NV 89126

Wilcox, Thomas W
Troutman Sanders Llp
401 Ninth Street Nw Ste 1000
Washington, DC 20004-2134

Childs, Christie
386 E. Crimson Cir., Apt. 11
Salt Lake City, UT 84115



Edward D. Greenberg